



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :  
- against - : FINAL  
Police Officer Jarmarie Flowers : ORDER  
Tax Registry No. 948975 : OF  
Manhattan Court Section : DISMISSAL  
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Police Officer Jarmarie Flowers, Tax Registry No. 948975, Shield No. 1857, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2015-13923, as set forth on form P.D. 468-121, dated July 24, 2015, and Charges and Specifications numbered 2014-11803, as set forth on form P.D. 468-121, dated September 17, 2014 after a review of the entire record, I find Respondent, having pleaded Guilty, is found Guilty as charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Jarmarie Flowers from the Police Service of the City of New York.

  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. April 14, 2016



POLICE DEPARTMENT

March 28, 2016

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In the Matter of the Charges and Specifications : Case Nos.  
- against - : 2015-13923 &  
Police Officer Jamarie Flowers : 2014-11803  
Tax Registry No. 948975 :  
Manhattan Court Section :  
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At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Paul M. Gamble  
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Jessica Brenes, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: Craig Hayes, Esq.  
Worth, Longworth & London, LLP  
111 John Street - Suite 640  
New York, NY 10038

To:

HONORABLE WILLIAM J. BRATTON  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038



**Charges and Specifications:**

**Disciplinary Case No. 2015-13923**

1. Said Police Officer Jarmarie Flowers, while assigned to the Manhattan Court Section on April 18, 2015, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department to wit: he text messaged Person A<sup>1</sup> the statements, "Next time we cross paths will be our last. We done talking. Invest in a gun and a vest. See u soon and o yea I wont be doing any talking."  
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT-PROHIBITED  
CONDUCT – GENERAL REGULATIONS

**Disciplinary Case No. 2014-11803**

1. Said Police Officer Jarmarie Flowers, assigned to 49<sup>th</sup> Precinct, on May 03, 2014, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer Flowers did discharge his firearm without official necessity.  
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
2. Said Police Officer Jarmarie Flowers, assigned to 49<sup>th</sup> Precinct, on May 03, 2014, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer Flowers did consume an intoxicant to the extent that he was unfit for duty.  
P.G. 203-04, Page 1, Paragraph 1 and 2 – FITNESS FOR DUTY
3. Said Police Officer Jarmarie Flowers, assigned to 49<sup>th</sup> Precinct, on May 03, 2014, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer Flowers did fail to safeguard his firearm.  
P.G. 204-08, Page 2, Paragraph 7 – UNIFORMS AND EQUIPMENT,  
FIREARMS GENERAL REGULATIONS
4. Said Police Officer Jarmarie Flowers, assigned to 49<sup>th</sup> Precinct, on May 03, 2014, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Police Officer Jarmarie Flowers, possessed and did load his service firearm with unauthorized ammunition. *(As amended)*  
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

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<sup>1</sup> [REDACTED] was erroneously referred to as [REDACTED] on the Charges and Specification in Disciplinary Case 2015-13923. His surname was corrected by oral amendment of the Assistant Department Advocate.



## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 14, 2016. Respondent, through his counsel, entered pleas of Guilty to the subject charges. The Department called Police Officer Christopher Neil as a witness. Respondent testified on his own behalf. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

## DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

## SUMMARY OF EVIDENCE IN MITIGATION

Respondent has pled guilty to five charges and specifications in two separate disciplinary cases. The facts are not in dispute and Respondent readily admits to the charged misconduct.

### Disciplinary Case No. 2014-11803

On the evening of May 3, 2014, while off-duty and armed, Respondent attended a party at his cousin's home (Tr. 20). He admittedly drank "[a] lot of alcohol" over the course of the night and was unfit for duty as a result (Tr. 21). His firearm was loaded with unauthorized ammunition from a previous trip to the gun range (Tr. 21, 59). Respondent's firearm was loaded with Winchester ammunition, which, unlike authorized Department ammunition, is not hollow-point and will ricochet (Tr. 59).

Around midnight, Respondent left his cousin's home and returned to his apartment building in [REDACTED]. He then went to another gathering at a friend's apartment who lives in his building (Tr. 37-38). While there, Respondent continued to drink alcohol with a number of friends and acquaintances (Tr. 38). At some point, Respondent had a verbal disagreement with Christopher Neil, another uniformed member of the Department (Tr. 22). Neil testified at trial that the disagreement arose from a generalized conversation about law enforcement (Tr. 73).



The conversation became heated and Respondent became upset as a result (Tr. 73). According to Neil, Respondent approached him in an aggressive manner and challenged him to fight (Tr. 87). Neil stood up from where he was sitting and was ultimately "removed [...]" from the apartment" and brought down to the building's parking lot by others (Tr. 87-88). Respondent followed Neil to the parking lot where he had another verbal confrontation with him, before ultimately walking away (Tr. 44, 88).

As Respondent walked back toward the entrance of his apartment building, with his back to the other individuals in the parking lot, he pointed his firearm in the air and fired six rounds (Tr. 47). There were several apartment balconies adjacent to Respondent's line of fire (Tr. 46).

Respondent went to his apartment and shortly thereafter, was arrested by [REDACTED] police (Tr. 24, 47). He was charged with the felony of Reckless Endangerment in the First Degree (Penal Law § 120.25), but ultimately entered a plea of guilty to Reckless Endangerment in the Second Degree (Penal Law § 120.20), as a class A misdemeanor (Tr. 28). He was sentenced to pay a five hundred dollar fine, serve twenty hours of community service and a one year conditional discharge (Tr. 28).

Respondent testified that at the time of the incident, he was going through a stressful period with regard to his family life (Tr. 19). [REDACTED]

[REDACTED] (Tr. 19-20).

After the incident, Respondent testified that he realized alcohol had become a problem in his life and sought professional help (Tr. 24). He attended a twenty-eight day inpatient rehabilitation program and a subsequent outpatient program, which included random urine testing (Tr. 26). According to Respondent, the last time he drank alcohol was the night of the incident (Tr. 27).



Disciplinary Case No. 2015-13923

Respondent testified that on April 18, 2015, he had just returned home from taking his fiancée and [REDACTED] to the hospital after his [REDACTED] had a seizure. While at the hospital, Respondent found out that his fiancée's ex-boyfriend and father of her children, Person A, was on his way to the hospital. According to Respondent, he left the hospital in an effort to avoid a confrontation with Person A, with whom he had issues in the past (Tr. 30-31). After receiving an offensive text message from Person A, Respondent sent a text message back which read, "Next time we cross paths will be our last. We done talking. Invest in a gun and a vest. See u soon and o yea I wont be doing any talking" (Tr. 31).

Respondent asserted that in the text message he sent Person A, he was quoting a lyric from a rap song and never intended to follow through on the threat (Tr. 31 ). Respondent testified that Person A had been saying "a lot of things that were hurtful and untruthful" and he was "just texting and rambling away" because he was angry and frustrated (Tr. 53-54). Respondent further testified that he felt terrible about having sent the text message and he wished that he had never sent it (Tr. 32, 53).

### PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined (*See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 [1974]). Respondent was appointed to the Department on July 6, 2010. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

As Respondent had pled guilty to the charges in the two disciplinary cases before this tribunal, the only question to be addressed here is whether Respondent should be dismissed from the Department, as recommended by the Department Advocate.



Respondent's attorney argued that Respondent acted stupidly with regard to the text message sent in *Case No. 2015-13923*, but argued that it was not dangerous. (Tr. 91). However, Respondent's attorney acknowledged the severity of the charges against Respondent in *Case No. 2014-11803*. He argued, though, that Respondent admitted he acted both carelessly and recklessly and he should not be defined by one night of drinking (Tr. 90). He further argued that because Respondent was not offered a penalty short of termination by the Department Advocate, he could have simply resigned from the Department. He pointed to the fact that Respondent is a young, articulate man with a college degree which would allow him to find a new job outside of the Department. Nonetheless, Respondent chose to testify in mitigation of his penalty because he "loves" his job and wants to remain a police officer (Tr. 33).

Respondent argued that his background and family history should be considered a mitigating factor. He testified that he grew up in a rough neighborhood and was raised by his grandmother because his mother was incarcerated (Tr. 15-16). Growing up he was repeatedly told the story of how his uncle had been killed by a [REDACTED] police officer five years before he was born (Tr. 16). He testified that as he got older, he decided that he wanted to be a police officer to prove to his grandmother that "not all police officers were bad" (Tr. 16). He took the NYPD exam while still in high school and entered the academy six months after graduating from college (Tr. 17).

Respondent's attorney likened Respondent's discharge of his firearm while he was intoxicated to cases in which members of service drive while intoxicated (Tr. 95). He argued that Respondent's case is not worse than a DWI case in which "driving a car while drunk is like driving a 3,000-pound bullet down the highway with an unknown victim at the end" (Tr. 95). He reasoned that while DWI cases involve situations in which an individual acts carelessly and

recklessly under circumstances that could have injured or killed someone, members of service are allowed to keep their jobs with a standard penalty that includes treatment for an alcohol problem (Tr. 93).

Additionally, Respondent's attorney pointed to past cases involving firearm discharges related to alcohol in which a respondent was not dismissed from the Department. Finally, Respondent's attorney characterized Respondent's actions as "a mistake made through the fog of alcohol and the irrational behavior that it creates..." (Tr. 98).

There are many factors to be considered in determining if a penalty should be mitigated. These include the nature and seriousness of the offense; the notice provided to Respondent that the behavior was improper; Respondent's past work record, which includes the length of service and past performance on the job; the consistency of the penalty imposed for similar misconduct; and Respondent's demonstration of an understanding of the wrongfulness of his or her actions and ability to be rehabilitated.

The seriousness of the charges against Respondent cannot be understated. Respondent intentionally fired six rounds while walking adjacent to his apartment building and beneath a number of balconies without any reason or necessity for doing so. He is extremely fortunate that no one was injured as a result of his recklessness. The high volume of rounds discharged is certainly an aggravating factor. Respondent fired his gun six times, creating six distinct opportunities to injure a person or property.

Respondent testified that the May 3, 2014, incident was an isolated incident fueled by alcohol. What is troubling to this tribunal however, is that almost a year later, when placed in a situation in which he again was angry and frustrated, Respondent sent a threatening text message referencing "a gun and a vest" to his fiancée's ex-boyfriend. Though Respondent claims that he



was merely venting his frustration, it is undeniable that engaging in such behavior, whether provoked or not, is unacceptable for members of this Department. Finally, this pattern of behavior evinces a lack of self-control which is incompatible with continued service as a member of this Department.

Respondent's attorney invited the tribunal's attention to past cases involving firearm discharges in which a respondent was not dismissed from the Department. Reliance on *Case No. 1996-70743* (August 26, 1996), however, is misplaced. While it is true that not all members of service who recklessly discharge their firearms are dismissed, such cases involve an accidental discharge. In the above mentioned case, the respondent, while off-duty and intoxicated, fired one round which ended up hitting a neighbor's flower box. The respondent in that case admitted that he had an alcohol problem, attended inpatient treatment, was suspended for 60 days and placed on one-year dismissal probation. Although alcohol was involved in that case, the respondent was found to have discharged his firearm accidentally, rather than deliberately.

Department precedent dictates that members who intentionally discharge their firearms in non-enforcement situations are separated from it (*See Case Nos. 2007-83211 & 2009-85135* [May 17, 2011], *aff'd, Matter of Amador v. Kelly*, 109 A.D.3d 762 [1st Dep't 2013])[Nine-year police officer with no prior disciplinary history dismissed for firing his gun in the direction of his girlfriend, creating a substantial risk of inflicting serious physical injury or death to her while placing her in fear of losing her life, failing to report the incident to the Department, and abusing sick leave]). In fact, separation has been warranted in cases where a firearm was merely brandished, not fired, in non-enforcement situations (*See Case No. 2009-85841* [March 9, 2011])[Seventeen-year police officer with no prior disciplinary record negotiated a penalty of 31 suspension days, one year dismissal probation, forfeiture of all time/leave balances, and

immediate vested-interest retirement for confronting several unruly passengers on a LIRR train and brandishing his firearm at them in an attempt to quiet them down]).

Accordingly, I recommend that Respondent be DISMISSED from the Department.

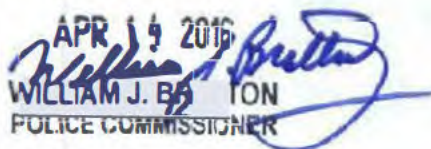
Respectfully submitted,

A handwritten signature in black ink, appearing to be "Paul M. Gamble", written over the text "Respectfully submitted,".

Paul M. Gamble  
Assistant Deputy Commissioner Trials

**APPROVED**

APR 14 2016  
WILLIAM J. BATTEN  
POLICE COMMISSIONER

A handwritten signature in blue ink, appearing to be "William J. Batten", written over the printed name and title.





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JARMARIE FLOWERS  
TAX REGISTRY NO. 948975  
DISCIPLINARY CASE NO. 2015-13923 & 2014-11803

Respondent was appointed to the Department on July 6, 2010. On his last three annual performance evaluations, Respondent twice received an overall rating of 3.5 "Highly Competent/Competent" and once received an overall rating of 3.0 "Competent." [REDACTED]

From May 3, 2014 to June 2, 2014, Respondent was suspended as a result of the charges and specifications in Case No. 2014-11803. On June 3, 2014, Respondent was placed on modified duty, which remains ongoing. Additionally, on June 30, 2014, Respondent was placed on Level II Disciplinary Monitoring, which also remains ongoing.

Paul M. Gamble  
Assistant Deputy Commissioner